

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN D'AGOSTINI,

Plaintiff-Appellant,

v

CLINTON GROVE CONDOMINIUM
ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED

March 1, 2005

No. 250896

Macomb Circuit Court

LC No. 02-001704-NO

Before: Zahra, P.J., and Neff and Cooper, JJ.

ZAHRA, P.J. (*dissenting*).

I respectfully dissent from the majority's conclusion that there exists a question of fact regarding the open and obvious nature of the snow and ice that caused plaintiff's injuries. "Generally, a premises possessor owes a duty of care to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 328; 683 NW2d 573 (2004). This duty does not encompass a duty to protect an invitee from known or "open and obvious" dangers unless the premises possessor should anticipate the harm despite knowledge of it on behalf of the invitee. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001).

This Court has repeatedly recognized that the risks of falling on snow or ice are open and obvious. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 5; 649 NW2d 392 (2002); *Joyce v Rubin*, 249 Mich App 231, 239-240; 642 NW2d 360 (2002). Here, plaintiff, who twice traversed the area where he fell immediately before the fall, knew of the danger of snow and ice. When asked how deep the snow was, plaintiff answered, "Maybe an inch, inch and a half. It was all ice underneath." Thus, defendant did not have a duty to protect plaintiff from the dangers associated with a snow and ice covered parking area unless there are "special aspects" of the condition that made the danger unreasonably dangerous. *Mann, supra* at 328.

No special aspects exist in this case. The danger created by the ice in the driveway did not impose an unreasonably high risk of severe harm. *Lugo, supra* at 518-519. Further, as there was more than one means of ingress and egress to the condominium, the danger was not effectively unavoidable and did not give rise to a uniquely high likelihood of harm. *Id.*

I would affirm the judgment of the lower court.

/s/ Brian K. Zahra